In Supreme Court of the United States, December, 1852. *Writ of Error to the Supreme Court of Illinois.*

MOORE, EXECUTOR OF EELLS, PLAINTIFF IN ERROR, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS.

1. A State may by virtue of its general police power, repel from its borders an unacceptable population, whether paupers, criminals, fugitives, or liberated slaves, and may hence punish her own citizens who thwart this policy of expulsion by assisting such fugitives.
2. The Illinois act is not the same as the Act of Congress of February 12, 1793—section 4.
3. A man may by the same act, commit two offences against two different sovereignties, and may hence be punished by both, but this is not a double punishment for the same offence.
4. Prigg *v.* Pennsylvania, 16 Peters, 540, commented on and points restated.

The opinion of the Court was delivered by

GRIER, J.—The plaintiff in error was indicted and convicted under the criminal code of Illinois, for "harboring and secreting a negro slave." The record was removed by writ of error, to the Supreme Court of that State; and it was there contended on behalf of the plaintiff in error, that the judgment and conviction should be reversed, because the statute of Illinois, upon which the indictment was founded, is void, by reason of its being in conflict with that article of the constitution of the United States, which declares "that no person held to labor or service in one State under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such labor may be due," and also because said statute is in conflict with the Act of Congress on the same subject.

That this record presents a case of which this court has jurisdiction under the 25th section of the Judiciary Act, is not disputed.

The statute of Illinois, whose validity is called in question, is contained in the 149th section of the criminal code, and is as follows: "if any person shall harbor or secrete any negro, mulatto,

or person of color, the same being a slave or servant owing service or labor to any other persons, whether they reside in this State or in any other State or territory or district, within the limits and under the jurisdiction of the United States, or shall in any wise hinder or prevent the lawful owner or owners of such slaves or servants, from retaking them in a lawful manner, every such person so offending, shall be deemed guilty of a misdemeanor, and fined not exceeding five hundred dollars, or imprisoned not exceeding six months."

The bill of indictment framed under this statute, contains four counts:

The 1st charges that "Richard Eells, a certain negro slave owing service to one C. D., of the State of Missouri, did unlawfully *secrete*, contrary to the form of the statute," &c.

2d. That he "*harbored*" the same.

3d. For unlawfully secreting a negro owing labor in the State of Missouri to one C. D., which said negro had secretly fled from said State and from said C. D.

4th. For unlawfully preventing C. D., the lawful owner of said slave, from retaking him in a lawful manner, by secreting the said negro, contrary to the form of the statute, &c.

In view of this section of the criminal code of Illinois, and this indictment founded on it, we are unable to discover anything which conflicts with the provisions of the constitution of the United States, or the legislation of Congress on the subject of fugitives from labor. It does not interfere in any manner, with the owner or claimaint, in the exercise of his right to arrest and recapture his slave. It neither interrupts, delays nor impedes the right of the master to immediate possession. It gives no immunity or protection to the fugitive against the claim of his master. It acts neither on the master nor his slave; on his right or his remedy. It prescribes a rule of conduct for the citizens of Illinois. It is but the exercise of the power which every State is admitted to possess, of defining offences and punishing offenders against its laws. The power to make municipal regulations for the restraint and punishment of crime, for the preservation of the health and morals of her

citizens, and of the public peace, has never been surrendered by the States, or restrained by the Constitution of the United States.

In the exercise of this power, which has been denominated the police power, a State has a right to make it a penal offence to introduce paupers, criminals, or fugitive slaves within its borders and punish those who thwart this policy by harboring, concealing, or secreting such persons. Some of the States coterminous with those who tolerate slavery, have found it necessary to protect themselves against the influx either of liberated or fugitive slaves, and to repel from their soil a population likely to become burdensome and injurious, either as paupers or criminals. Experience has shown also that the results of such conduct as that prohibited by the statute in question are not only to demoralize their citizens who live in daily and open disregard of the duties imposed upon them by the constitution and laws, but to destroy the harmony and kind feelings which should exist between citizens of this Union, to create border feuds and bitter animosities, and to cause breaches of the peace, violent assaults, riots and murder. No one can deny or doubt the right of a State to defend itself against evils of such magnitude, and punish those who perversely persist in conduct which promotes them.

As this statute does not impede the master in the exercise of his rights, so neither does it interfere to aid or assist him, If a State, in the exercise of its legitimate powers in promotion of its policy of excluding an unacceptable population, should thus indirectly benefit the master of a fugitive no one has a right to complain that it has thus far, at least, fulfilled a duty assumed or imposed by its compact as a member of the Union.

But though we are of opinion that such is the character, policy and intention of the statute in question, and that for this reason alone the power of the State to make and enforce such a law cannot be doubted; yet we would not wish it to be inferred by any implication from what we have said, that any legislation of a State to aid and assist the claimant, which does not directly or indirectly delay, impede or frustrate the reclamation of a fugitive, or interfere with the claimant in the prosecution of his other remedies,

is necessarily void. This question has not been before the court, and cannot be decided in anticipation of future cases.

It has been urged that this act is void, as it subjects the delinquent to a double punishment for a single offence. But we think that neither the fact assumed in this proposition, nor the inference from it, will be found to be correct. The offences for which the fourth section of the act of 12th February, 1793, subjects the delinquent to a fine of five hundred dollars, are different in many respects from those defined by the statute of Illinois. The Act of Congress contemplates recapture and reclamation, and punishes those who interfere with the master in the exercise of this right: 1st, by obstructing or hindering the claimant in his endeavors to seize and arrest the fugitive. 2dly, by rescuing the fugitive when arrested; and, 3dly, by harboring or concealing him after notice.

But the act of Illinois having for its object the prevention of the immigration of such persons, punishes the harboring or secreting negro slaves, whether domestic or foreign, and without regard to the masters' desire either to reclaim or abandon them. The fine imposed is not given to the master as the party injured, but to the State, as a penalty for disobedience to its laws. And if the fine inflicted by the Act of Congress had been made recoverable by indictment, the offence, as stated in any one of the counts of the bill before us, would not have supported such an indictment. Even the last count, which charges the plaintiff in error with unlawfully preventing C. D., the lawful owner, from retaking the negro slave, as it does not allege notice, does not describe an offence punishable by the Act of Congress.

But, admitting that the plaintiff in error may be liable to an action under the act of Congress for the same acts of harboring and preventing the owner from retaking his slave, it does not follow that he would be twice punished for the same offence. An offence, in its legal signification, means the transgression of a law. A man may be compelled to make reparation in damages to the injured party, and be liable also to punishment for a breach of the public peace, in consequence of the same act, and may be said, in common parlance, to be twice punished for the same offence. Every citizen

of the United States, is also a citizen of a State or Territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offence or transgression of the laws of both. Thus, an assault upon the Marshal of the United States, and hindering him in the execution of legal process, is a high offence against the United States, for which the perpetrator is liable to punishment; and the same act may be also a gross breach of the peace of the State, a riot, assault or a murder, and subject the same person to a punishment under the state laws for a misdemeanor or felony. That either or both may, (if they see fit,) punish such an offender, cannot be doubted; yet it cannot be truly averred that the offender has been twice punished for the same offence, but only that by one act he has committed two offences, for each of which he is justly punishable. He could not plead the punishment by one, in bar to a conviction by the other. Consequently, this Court has decided, in the case of *Fox* v. *The State of Ohio*, 5 Howard, 432,) that a State may punish the offence of uttering or passing false coin as a cheat or fraud practised on its citizens; and in the case of *The United States* v. *Marigold*, 9 How. 560, that Congress, in the proper exercise of its authority, may punish the same act as an offence against the United States.

It has been urged, in the argument on behalf of the plaintiff in error, that an affirmance of the judgment in this case will conflict with the decision of this Court in the case of *Prigg* v. *The Commonwealth of Pennsylvania*, 16 Peters, 540. This, we think, is a mistake. The questions presented and decided in that case differed entirely from those which affect the present. Prigg, with full power and authority from the owner, had arrested a fugitive slave in Pennsylvania, and taken her to her master in Maryland. For this he was indicted and convicted under a statute of Pennsylvania, making it a felony to take and carry away any negro or mulatto for the purpose of detaining them as slaves.

The following questions were presented by the case and decided by the Court.

1st. That under and in virtue of the Constitution of the United

States, the owner of a slave is clothed with entire authority, in every State in the Union, to seize and recapture his slave wherever he can do it without illegal violence or a breach of the peace.

2d. That the government is clothed with appropriate authority and functions to enforce the delivery on claim of the owner, and has properly exercised it under the act of Congress of 12th February, 1793.

3d. That any State law or regulation which interrupts, impedes, limits, embarrasses, delays or postpones the right of the owner to the immediate possesssion of the slave and the immediate command of his service, is void.

We have, in this case, assumed the correctness of these doctrines, and it will be found, that the grounds on which this case is decided were fully recognised in that. "We entertain," say the Court, (page 625,) "no doubt whatsoever that the States, in virtue of their general police power, possess full jurisdiction to arrest and restrain runaway slaves, and remove them from their borders, and otherwise to secure themselves against their depredations and evil example, as they certainly may do in cases of idlers, vagabonds and paupers. The rights of the owners of fugitive slaves are in no just sense interfered with or regulated by such a course, and in many cases the operations of the police powers, although designed essentially for other purposes, for the protection, safety and peace of the State, may essentially promote and aid the interests of the owners. But such regulations can never be permitted to interfere with, or to obstruct the just rights of the owner to reclaim his slave, derived from the Constitution of the United States, or with the remedies prescribed by Congress to aid and enforce the same."

Upon these grounds we are of opinion that the act of Illinois, upon which this indictment is founded, is constitutional, and therefore affirm the judgment.

Judgment affirmed.